

(2) All other matters relevant to the determination of the claim.

(e) If at any time during the processing of the claim by the deputy commissioner, the evidence establishes that the claimant is not entitled to benefits under the Act, the deputy commissioner may terminate evidentiary development of the claim and proceed as appropriate.

§ 725.406 Medical examinations and tests.

(a) Medical examinations and tests authorized by the deputy commissioner shall be conducted, if possible, in the vicinity of the miner's residence by physicians or in medical facilities selected from a list compiled by the Secretary, or by a physician or medical facility approved by the deputy commissioner at the miner's request.

(b) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in compliance with the provisions of part 718 of this subchapter, the deputy commissioner shall schedule the miner for further examination and testing where necessary and appropriate.

(c) The cost of any medical examination or test authorized under this section, including the cost of travel to and from the examination, shall be paid by the fund. No reimbursement for overnight accommodations shall be authorized unless the deputy commissioner determines that an adequate testing facility is unavailable within one day's round trip travel by automobile from the miner's residence. The fund shall be reimbursed for such payments by an operator, if any, found liable for the payment of benefits to the claimant.

§ 725.407 Additional medical evidence.

(a) If, at any time after the completion of initial medical examinations and tests, unresolved medical questions remain, the deputy commissioner may cause the claimant to be examined by a physician selected by the deputy commissioner.

(b) Any miner dissatisfied with the results of the medical examinations or tests conducted under § 725.406 may obtain further medical examinations or tests and submit them to the deputy

commissioner. Such further examinations or tests shall be reimbursable by the fund, or by a responsible coal operator where appropriate, if the claimant is finally adjudicated entitled to benefits and if such further examinations or tests were relevant to the determination of the claim.

(c) If additional medical evidence is obtained in accordance with paragraph (a) of this section, the deputy commissioner may order the physician selected to retest or reexamine the miner to do so without the presence or participation of any other physician who previously examined the miner, and without benefit of the conclusions of any other physician who has examined the miner.

§ 725.408 Refusal to submit to medical examinations or tests.

If an adjudication officer determines that a miner has unreasonably refused to submit to medical examinations or tests scheduled under §§ 725.406 or 725.407(a), all evidentiary development of the claim shall be suspended and the adjudication officer shall proceed to deny the claim by reason of abandonment (§ 725.409) or by dismissal (§ 725.465) as is appropriate.

§ 725.409 Denial of a claim by reason of abandonment.

(a) A claim may be denied at any time by the deputy commissioner by reason of abandonment where the claimant fails:

- (1) To undergo a required medical examination without good cause; or,
- (2) To submit evidence sufficient to make a determination of the claim; or,
- (3) To pursue the claim with reasonable diligence.

(b) If the deputy commissioner determines that a denial by reason of abandonment is appropriate, he or she shall notify the claimant of the reasons for such denial and of the action which must be taken to avoid a denial by reason of abandonment. If there is no response to the notice within 30 days after such notice is sent, the claim shall be considered denied by reason of abandonment. If the claimant responds in a timely fashion, indicating a desire to pursue the claim, by requesting a

hearing or indicating the intent to submit additional evidence, the deputy commissioner shall, if a hearing is requested, proceed in accordance with § 725.412 or allow a reasonable time of not less than 60 days for the claimant to take the specified remedial action. If the claimant completes the action requested within the time allowed, the claim shall be developed, processed and adjudicated as specified in this part. If the claimant does not fully comply with the action requested by the deputy commissioner, the deputy commissioner shall so notify the claimant. If the claimant does not request a hearing or fully comply with the action requested by the deputy commissioner within 30 days of such notification, the claim shall be considered denied by reason of abandonment, except that a new claim may be filed at any time and new evidence submitted where the requirements of § 725.310 are not met.

ADJUDICATION BY THE DEPUTY
COMMISSIONER

§ 725.410 Initial findings by the deputy commissioner.

(a) Based upon the evidence developed, the deputy commissioner may make an initial finding with respect to the claim.

(b) If the evidence supports an initial finding of eligibility, and it has been determined that a coal mine operator may be liable for the claim, the deputy commissioner shall proceed in accordance with § 725.412. If no operator can be identified, the deputy commissioner shall proceed in accordance with § 725.411.

(c) If the evidence submitted does not support an initial finding of eligibility, the deputy commissioner shall so notify the claimant in writing. This notification shall specify the reasons why the claim cannot be approved, the additional evidence necessary to establish entitlement, the right of the claimant to submit additional evidence, and the right to request a hearing. Within 60 days from the mailing of such notice, unless such period is extended by the deputy commissioner for good cause shown, the claimant may submit new evidence or request a hearing. If the claimant:

(1) Takes no action within the specified 60 day period, the claim shall be considered denied by reason of abandonment (see § 725.409).

(2) Submits new evidence within the specified 60 day period, the deputy commissioner shall reconsider the initial finding, taking into account the additional evidence submitted. If the new evidence supports a finding of entitlement the deputy commissioner shall proceed in accordance with paragraph (b) of this section. If the new evidence does not support a finding of entitlement, the deputy commissioner shall notify the claimant in writing of this fact and the reasons therefor, and that he or she may request a hearing within 60 days after receipt of such notice unless the period is extended by the deputy commissioner for good cause shown. If no hearing is requested, the claim shall be deemed denied by reason of abandonment (see § 725.409).

(d) Unless an earlier operator identification has been made, if a hearing is requested under paragraph (c) of this section, the deputy commissioner shall identify the coal mine operator, if any, which may be liable for the payment of benefits to the claimant and proceed in accordance with § 725.412. If no such operator can be identified, the deputy commissioner may schedule a conference (see § 725.416) or refer the claim to the Office of Administrative Law Judges for appropriate proceedings.

§ 725.411 Adjudication upon initial findings of eligibility and no operator responsibility.

Where the deputy commissioner has found that the claimant is eligible and that there is no operator responsible for the payment of benefits, the deputy commissioner shall issue a proposed decision and order including findings of fact and conclusions of law as required by § 725.418 and authorize the payment of benefits. The claimant shall have 30 days after the date of issuance of the proposed decision and order within which to reject any or all of its terms. If the claimant does not reject the proposed decision and order, either in whole or in part, within this 30-day period, it will become final and effective. If for any reason the claimant rejects a proposed decision and order, the deputy